

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

CHAD CALHOUN,

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE,
ET AL,

Defendants.

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Civil Action No. 5:22-CV-10-RWS-JBB

ORDER

Plaintiff Chad Calhoun, an inmate proceeding *pro se*, filed the above-captioned civil action seeking injunctive relief under the Freedom of Information Act. The case was referred to the United States Magistrate Judge in accordance with 28 U.S.C. § 636.

Plaintiff sought production of a telephone conversation he had on the Inmate Telephone System (TRUFONE) on November 19, 2018. Docket No. 1 ¶ 5. The Defendants filed a motion for summary judgment stating that they received the request for the telephone call on April 8, 2021, but the record no longer existed because the TRUFONE system automatically deletes phone calls over 180 days old. Docket No. 4 at 1–2. Plaintiff did not file a response to the motion.

After review of the pleadings, the Magistrate Judge issued a report recommending that the motion for summary judgment be granted and the lawsuit dismissed. Docket No. 5. The Magistrate Judge determined that the prison officials made a good faith effort to search for the record, but that an agency cannot produce a document which no longer exists. *Id.* at 2–3.

Plaintiff received a copy of the Magistrate Judge’s Report on October 26, 2022. Docket No. 6. He has filed no objections. Accordingly, he is barred from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the District Court. *Duarte v. City of Lewisville, Texas*, 858 F.3d 348, 352 (5th Cir. 2017).

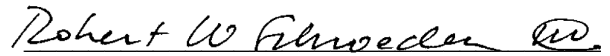
The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918 (1989) (explaining that where no objections to a Magistrate Judge's report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law.") It is accordingly

ORDERED that the Magistrate Judge's Report and Recommendation (Docket No. 5) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that Defendants' motion for summary judgment (Docket No. 4) is **GRANTED** and the above-styled civil action is **DISMISSED WITH PREJUDICE**. It is further

ORDERED that any and all motions which may be pending in this civil action are hereby **DENIED**.

So ORDERED and SIGNED this 17th day of March, 2023.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE